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February 7, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Implementation of the Satellite Home Viewer Improvement Act of 1999,
Application of Network Nonduplication, Syndicated Exclusivity, and Sports
Blackout Rules To Satellite Retransmissions, CS Docket No. 00-2

Dear Ms. Salas:

Enclosed for filing please find an original and four copies of the Comments of Fox Entertainment Group ("Fox") in response to the Notice of Proposed Rulemaking released by the Commission on January 7, 2000 in the above-captioned proceeding. Fox has also submitted today a copy of its comments via diskette to Eloise Gore of the Cable services Bureau.

Please date-stamp the enclosed copy of the Comments and return it to the messenger as proof of service. Do not hesitate to contact me directly if you have any questions regarding the foregoing. Thank you.

Sincerely,

Bryan T. Bookhard
Bryan T. Bookhard

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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OFFICE OF THE SECRETARY

In the Matter of)
Implementation of the Satellite Home)
Viewer Improvement Act of 1999,)
Application of Network Nonduplication,)
Syndicated Exclusivity, and)
Sports Blackout Rules)
to Satellite Retransmission)
)

CS Docket No. 00-2

COMMENTS OF FOX ENTERTAINMENT GROUP

Fox Entertainment Group (“Fox”), by its attorneys, hereby submits its Comments in the above-captioned Notice of Proposed Rulemaking¹ with respect to the Commission’s implementation of section 339 of the Communications Act of 1934.² Specifically, Fox urges the Commission to apply its sports blackout rule³ to satellite carriers as intended by Congress. That is, the new satellite rule should be tailored as closely as possible to mirror the existing cable rule.⁴

The SHVIA extends to satellite operators the benefits of a compulsory license scheme that facilitates their delivery of distant broadcast signals to their subscribers. Although it created an exception from exclusive copyright protection for these signals,

¹ In the Matter of Implementation of the Satellite Home Viewer Improvement Act of 1999, Application of Network Nonduplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmission, CS Docket No. 00-2, FCC No. 00-4 (rel. Jan. 7, 2000) (“NPRM”).

² 47 U.S.C. § 339(b), *as enacted by* § 1008 of the Satellite Home Viewer Improvement Act of 1999, Pub. L. No. 106-113, 113 Stat. 1501, Appendix I (1999) (“SHVIA”).

³ 47 C.F.R. § 76.67.

⁴ See NPRM at ¶ 3 (noting that Congress asked the new rules to be “as similar as possible” to the rules applicable to cable operators).

Congress insisted that the satellite compulsory license be narrowly construed.⁵

Therefore, the Commission should ensure that the new satellite sports blackout rule does not create loopholes or other exceptions that expand the limited privilege extended by the statutory license.

Congress established the baseline against which the new satellite rule is to be measured by making clear that it should be “as similar as possible” to the sports blackout rule already imposed on cable services.⁶ The cable sports blackout rule prohibits cable systems within the specified zone of a television broadcast station from importing a sports event that is being played in the broadcaster’s community when the event is not being telecast by local broadcast stations.⁷ The rule was carefully crafted by the Commission and reflects a balance of interests dating back to the late 1950s.⁸ Since that time, owners of copyrighted sports programming have factored the rule into their licensing arrangements and long-term business plans.

The Commission was entirely correct to recognize that the purpose in applying the rule to satellite retransmissions reflects a “balance between providing access to national programming” and protecting the contractual rights of broadcasters and rights

⁵ See Joint Explanatory Statement of the Committee of Conference on H.R. 1554, 106th Cong., 145 Cong. Rec. H11792 (daily ed. Nov. 9, 1999) (noting “most importantly” that the compulsory license must be construed “as narrowly as possible”) (“Joint Explanatory Statement”).

⁶ Joint Explanatory Statement at H11796. See also id. at H11792 (“[I]t is important that the satellite industry be afforded a statutory scheme for licensing television broadcast programming similar to that of the cable industry.”) (emphasis supplied).

⁷ See In the Matter of Amendment of Part 76 of the Commission’s Rules and Regulations Relative to Cable Television Systems and the Carriage of Sports Programs on Cable Television Systems, 54 FCC 2d 265, 266 ¶ 3 (1975) (“Sports Blackout Rulemaking”).

holders.⁹ Not only does the rule “insure the continued general availability of sports programming to the public,”¹⁰ but it reflects what has come to be long-standing practice in the sports television marketplace. If Congress had intended the Commission to upset these interests and expectations, it would have said so directly. Instead, Congress carefully extended to satellite carriers both the compulsory license for retransmitted broadcast stations and the protections currently enjoyed by rightsholders under the current cable rules.

The SHVIA requires the Commission to impose the sports blackout rule on retransmitted nationally distributed superstations.¹¹ In this instance, the statutory language is direct and manifestly unambiguous, requiring the Commission to “apply . . . sports blackout protection (47 C.F.R. 76.67) to the retransmission of the signals of nationally distributed superstations by satellite carriers.”¹² Thus, Congress directed the Commission to apply the same rule -- down to the citation -- on satellite carriers as applies to cable operators.

The statute also requires the Commission to impose the sports blackout rule on satellite-retransmitted network stations.¹³ The statutory language requires the application “to the extent technically feasible and not economically prohibitive”¹⁴ of “the sports blackout protection (47 C.F.R. 76.67) to the retransmission of the signals of network

⁸ Id. at 266-70 ¶¶ 4-16. Notably, the regulation that survives today as the sports blackout rule has deep historical roots.

⁹ NPRM at ¶ 9.

¹⁰ Id. at ¶ 24.

¹¹ 47 U.S.C. § 339(b)(1)(A).

¹² Id.

¹³ 47 U.S.C. § 339(b)(1)(B). See also Joint Explanatory Statement at H11796.

¹⁴ 47 U.S.C. § 339(b)(1)(B).

stations”¹⁵ Although the statute contemplates that the rule will take technical and economic considerations into account, it is clear that Congress intended this limitation to be applied narrowly, so as to avoid unnecessary loopholes in the new rule that could result in disparate treatment of cable and satellite operators.

First, the statute specifically refers to the Commission’s existing rule, which provides a concrete, black-line test for compliance. Moreover, Congress required a compelling justification for any deviation from the existing rule. The Conference Report clearly provides that “[t]he burden of showing that conforming to rules similar to cable would be ‘economically prohibitive’ is a heavy one.”¹⁶ Absent a showing that compliance would pose “a very serious economic threat to the health of the carrier,”¹⁷ Congress intended the same rule to apply to cable operators and satellite carriers – regardless of the signal being transmitted.

The Commission correctly understands that the purpose of the SHVIA was to place satellite carriers on an “equal footing with cable operators”¹⁸ -- not to provide them with any competitive advantage. It would be entirely contrary to Congressional intent to adopt a sports blackout rule that creates such an advantage for satellite operators. No deviation from the settled cable rules should be allowed unless the very heavy burden of proof contemplated by Congress is met.

¹⁵ 47 U.S.C. § 339(b)(1)(B).

¹⁶ Joint Explanatory Statement at H11796.

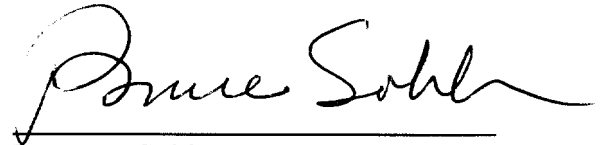
¹⁷ Id.

¹⁸ NPRM at ¶ 1.

CONCLUSION

For the foregoing reasons, the Commission should apply the sports blackout protections set forth in its current rules to the satellite retransmission of network and other broadcast stations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bruce Sokler", written over a horizontal line.

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Dated: February 7, 2000

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